STATE OF MICHIGAN

COURT OF APPEALS

ROSE MARIE HIGGINS, Personal Representative of the Estate of JANE PHILOMENA HIGGINS, Deceased, and CHRISTOPHER HIGGINS,

Plaintiffs-Appellants,

v

PROVIDENCE HOSPITAL & MEDICAL CENTERS, INC.,

Defendant-Appellee.

UNPUBLISHED
January 17, 2006

No. 255384
Oakland Circuit Court
LC No. 02-045244-NO

Before: Murray, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

In this premises liability action, plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

The decedent, Jane Higgins, was allegedly injured by an automatic revolving door at the Providence Medical Building in Southfield. The building had two automatic doors at the entrance, one that revolved and a non-revolving door that operated with a push button. A sign next to the doors directed visitors as follows:

Handicapped Entrance/Exit Doors

Walkers and Wheelchairs

DO NOT USE REVOLVING DOORS

Move away from the door and

push button to open door

Jane Higgins, who was using a four-prong cane, approached the revolving door to enter the building. Her husband Christopher entered the building through the non-revolving door, whereupon he discovered Jane lying on the ground, partially in the revolving door and partially in the lobby. Jane sustained a fractured hip as a result of her fall.

Jane and Christopher subsequently commenced this premises liability action, alleging claims for negligence, nuisance, and loss of consortium.[1] Defendant moved for summary disposition under MCR 2.116(C)(10), asserting that there was no evidence that the revolving door malfunctioned or that it had notice of any malfunction, and further, that the condition encountered by the revolving door was open and obvious. The trial court agreed and granted defendant's motion.

A trial court's decision regarding a motion for summary disposition is reviewed de novo. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* The court "must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law." *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114-115; 617 NW2d 725 (2000) (citation omitted).

In general, a premises owner owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001).

Plaintiffs' lawsuit was based on two theories (1) that the revolving door malfunctioned, causing it to strike Jane Higgins and knock her down; and (2) that even if the door didn't malfunction, it was unreasonably dangerous to persons using a cane, such as Jane Higgins, and, therefore, defendant should have warned cane users not to use the revolving door.

We conclude that the trial court properly granted defendant's motion for summary disposition of plaintiffs' "malfunction" theory of liability because there was no evidence that defendant had notice of any malfunction. An invitor's duty to invitees is to "exercise reasonable care to protect invitees . . . from an unreasonable risk of harm caused by a dangerous condition of the land that the owner knows or should know the invitees will not discover, realize, or protect themselves against." *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 532; 542 NW2d 912 (1995). Thus, summary disposition is properly granted when there is no genuine issue of material fact with respect to whether an invitee knew or should have known about the dangerous condition. *Prebenda v Tartaglia*, 245 Mich App 168, 169-170; 627 NW2d 610 (2001). Here, plaintiffs failed to present evidence demonstrating that defendant knew, or by the exercise of reasonable care should have discovered, that the revolving door was malfunctioning. Although plaintiffs assert that the door may have been involved in two other unspecified accidents, and that defendant was recently sued by someone else, plaintiffs failed to present any evidence factually supporting these assertions, or any details concerning the circumstances of these other alleged incidents. Accordingly, plaintiffs failed to establish a genuine issue of material fact with respect to whether defendant knew or should have known about a problem with the revolving door.

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[1] Jane Higgins subsequently died from unrelated causes, and Rose Marie Higgins, as Personal Representative for Jane's Estate, was substituted as a party in her place.

We also reject plaintiffs' argument that defendant may be liable because, notwithstanding any malfunction, the revolving door presented an unreasonable risk of harm to persons with a cane, such as Jane Higgins.

The duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land does not generally encompass open and obvious dangers. *Lugo*, *supra* at 516. Where the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee. *Id*., quoting *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). Whether a particular condition is open and obvious is determined by an objective test whereby the focus is on the characteristics of a reasonably prudent person. *Joyce v Rubin*, 249 Mich App 231, 238-239; 642 NW2d 360 (2002). Courts look not to the subjective degree of care used by the plaintiff or other idiosyncratic factors related to a particular plaintiff to determine whether the plaintiff should have known that the condition was hazardous, but to whether a reasonable person in his or her position would foresee the danger. *Lugo*, *supra* at 524-525; *Bragan v Symanzik*, 263 Mich App 324, 331-332; 687 NW2d 881 (2004); *Joyce*, *supra* at 238-239. A landowner is not required to protect an invitee from an open and obvious danger unless "special aspects" of the condition make it unreasonably dangerous. *Lugo, supra* at 517. A special aspect exists when the danger, although open and obvious, is unavoidable or imposes a uniquely high likelihood of harm of severity of harm. *Id*. at 518-519. For example, special aspect conditions would include (1) an unguarded thirty-foot deep pit in the middle of a parking lot resulting in a fall of an extended distance and (2) standing water at the only exit of a commercial building resulting in the condition being unavoidable because no alternative route is available. *Id*. at 518, 520.

Here, a sign was posted at the door entrance alerting persons approaching the building that persons with "walkers and wheelchairs" should not use the revolving door. This should have alerted a reasonable person in Jane Higgins' position, i.e., one using a four-pronged cane, that there was a risk to using the door. In light of this signage, any risk of danger associated with the revolving door was open and obvious. Further, there were no special aspects to the revolving door that negate application of the open and obvious rule. Any danger was not unavoidable because there was another push-button, non-revolving door for persons with canes or wheelchairs to use. Moreover, there is no basis for concluding that the revolving door created a uniquely high likelihood of harm or severity of harm. *Lugo, supra* at 518-519.

Affirmed.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly